

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.21.1801, 2.21.1802, 2.21.1803,)
2.21.1811, 2.21.1812, and 2.21.1831)
pertaining to exempt compensatory)
time policy)

TO: All Concerned Persons

1. On April 15, 2010, the Department of Administration published MAR Notice No. 2-21-430 regarding the proposed repeal of the above-stated rules at page 811 of the 2010 Montana Administrative Register, Issue Number 7.

2. A hearing was held on May 14, 2010. One person appeared but did not testify. The following written comments were received:

Comment 1: The statement of reasonable necessity was insufficient because it failed to adequately inform the public regarding the reasons why the rules were proposed to be repealed and what had changed since the rules were adopted to cause the Department of Administration to determine that the public was not affected. Since the statement of reasonable necessity was not understandable, the public could not meaningfully comment and the repeal could be seen as arbitrary and capricious.

Response 1: The department changed the statement of reasonable necessity to explain that the Montana Administrative Procedure Act's definition of rule, set out in 2-4-102(11)(a) and (b), MCA, was amended and no longer includes "rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system." The new statement of reasonable necessity also explained that the amendment to statute occurred in 2003 and the State Human Resource Division has been removing its internal administrative policies from the Administrative Rules of Montana as part of its review process. An Amended Notice and Extension of Comment Period on Proposed Repeal including the amended statement of reasonable necessity was published to give the public another opportunity to comment on the repeal.

Comment 2: A separate statement of reasonable necessity should be stated following each rule being repealed.

Response 2: In this case, the reasons for each rule's repeal are the same. Therefore, the statement was not repeated following each rule to save resources.

Comment 3: Internal management of state government affects the public because state employees' wages and benefits are sizable portions of the state's

budget. To take this policy out of public rulemaking gives the impression that this business is done behind closed doors.

Response 3: The repeal of these rules is consistent with the definition of rule in the above-cited statute. Further, the policy will now be published in the Montana Operation Manual (MOM). The MOM policies are available to employees and the public on the State Human Resources Division web site at <http://hr.mt.gov/hrpp/policies.mcp>x. If the policy is amended in the future, notice will be posted on the MINE web page, an internal site for state employees.

Comment 4: The rules at issue were implemented in accordance with 2-18-102, MCA, which requires the Department of Administration to adopt rules. Therefore, the rules are appropriately included in ARM. A statement of intent was included in an amendment to 2-18-102(3), MCA, in 1995 because "A statement is required for this bill because 2-18-102 requires the department of administration to adopt administrative rules containing personnel policies . . ." A Supreme Court case, State v. Vainio, 306 Mont. 439 (2001), stated: "When the legislature authorizes an agency to adopt rules, the procedures mandated by MAPA [Montana Administrative Procedure Act] apply."

Response 4: These rules are repealed to comply with the definition of rules in 2-4-102(11)(a) and (b), MCA, cited above, which was amended in 2003.

Comment 5: The statement of reasonable necessity stated that a "revised annual leave policy" would be included in the Montana Operations Manual. The annual leave policy has nothing to do with the exempt compensatory time policy.

Response 5: The reference to the annual leave policy was an error and was corrected in the amended notice.

3. On June 10, 2010, the Department of Administration published a notice revising the reasonable necessity statement and extending the comment period at page 1360 of the 2010 Montana Administrative Register, Issue Number 11.

4. The comment period closed on June 25, 2010, at 5:00 p.m. No further comments were received.

5. The Department of Administration has repealed ARM 2.21.1801, 2.21.1802, 2.21.1803, 2.21.1811, 2.21.1812, and 2.21.1831 as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 6, 2010.